IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4080 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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HIRALAL BHAVARDAS PAMNANI - Petitioner(s)

Versus

MUNICIPAL COMMISSIONER - Respondent(s)

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Appearance :
MR TR MISHRA for Petitioner(s):1,MR UT MISHRA for Petitioner(s): 1,
MR HS MUNSHAW for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 24/02/2006

ORAL JUDGMENT

1. The petitioner has approached this Court with the prayers that the respondent may be directed to release the amount of gratuity and provident fund with interest and to correctly calculate and pay with interest the pension to which the petitioner is entitled.

2. The learned counsel for the respondent, Mr.H.S.Munshaw, stated, on instructions of the respondent, that provisional pension is already fixed and being paid to the petitioner and final decision with regard to pension will be taken immediately after the Government takes and conveys its decision upon the reference made to the Vigilance Commission in respect of the disciplinary action already concluded and closed by the respondent against the petitioner. As for the remaining amounts due on account of leave encashment and gratuity, it was stated that the same shall be paid within two months from today.

3. Learned counsel Mr.Mishra submitted that the petitioner had retired on 31.8.2004 and the amounts of retiral dues were illegally withheld by the respondent and the payment was unduly delayed. Therefore, he insisted on payment of interest on delayed payment of the dues. Responding to that, learned counsel Mr.Munshaw submitted that the amount of gratuity carries interest under the statute itself and, for the remaining amount of which payment was delayed, the Court may not impose the liability of interest on the respondent which is an institution of local self-government having financial difficulties. He also submitted that, in view of pendency of the proceedings before the Vigilance Commission, the

petitioner was required to submit an undertaking to the effect that, if any direction is issued under section 451 of the Bombay Provincial Municipal Corporations Act, 1949, necessary recoveries may be effected from the pension of the petitioner.

4. In the above circumstances, the petition, admittedly, does not survive for any substantive relief and it is disposed with the directions that the respondent shall abide by the statement of making payment within two months of the remaining retiral dues under the head of gratuity and leave encashment against the undertaking required to be executed by the petitioner. It is directed that the amount due on account of encashment of leave shall be paid with 6% interest for the period from 1.9.2004 to 31.3.2006 and the amount of gratuity shall carry interest in accordance with the provisions of the Payment of Gratuity Act, 1972. The petition stands disposed and Rule is discharged, subject to the above-said directions, with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)